

The Appeals Board has reviewed and considered the record identified in the Award. The Appeals Board has also adopted the stipulations listed in the Award. In addition, the Appeals Board has adopted a stipulation by the parties relating to claimant's average weekly wage and underpayment of temporary total disability benefits.

ISSUES

Respondent asked the Appeals Board to review the following issues:

- (1) Nature and extent of claimant's disability.
- (2) The amount of claimant's average weekly wage.
- (3) The amount of underpayment of temporary total disability benefits.
- (4) The amount of compensation due taking into consideration the amount of the average weekly wage and the amount of temporary total disability benefits.

Claimant asked the Appeals Board to review:

- (1) All issues adversely determined to claimant.
- (2) Nature and extent of claimant's disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- (1) The Appeals Board agrees with and affirms the findings by the Administrative Law Judge that claimant sustained a 9 percent permanent partial general body disability.

Claimant injured her right knee on January 14, 1991, when she slipped and fell. Respondent provided treatment by Joseph W. Huston, M.D., who diagnosed chondromalacia of the patella and dislocation. He performed surgery on July 1, 1992, to shave the rough undersurface of the patella and to remove a bony ridge.

The dispute in this case concerns whether claimant suffered an injury to her low back and left knee as a result of the injury to the right knee. The Administrative Law Judge found that claimant sustained a general body disability. He found that claimant suffered additional permanent injury to her low back as a result of an altered gait. He rejected, on the other hand, the contention that claimant sustained permanent injury to her left knee.

Specifically, the Administrative Law Judge found that claimant sustained a 10 percent impairment to the right knee and 5 percent to her back. He combined these impairments based upon the AMA Guides to arrive at an initial conclusion of the Award that claimant sustained a 10 percent impairment to the body as a whole. He corrected the Award by an Order Nunc Pro Tunc on May 22, 1997, and changed the disability to a 9 percent impairment to the body as a whole. The Appeals Board agrees with and adopts the findings and conclusions by the Administrative Law Judge relating to the nature and extent of claimant's disability as corrected by the Order Nunc Pro Tunc of May 22, 1997.

- (2) The parties agree that claimant's average weekly wage should be modified to \$187.54. The parties had so stipulated prior to the Award, but the written stipulation was not submitted to the Administrative Law Judge until after the Award. On appeal, the parties agree that the average weekly wage used for calculating for permanent partial disability benefits should be \$187.54.

- (3) The parties also agree to the amount of underpayment of temporary total disability. The dispute arose because the average weekly wage used to calculate temporary total disability did not

include the value of fringe benefits even though those benefits had been terminated. The parties agree that claimant was underpaid \$1,429.36 and that claimant was temporarily totally disabled for 59.86 weeks. The records show claimant was paid \$7,405.50 and that respondent has paid the additional \$1,429.36 for a total of \$8,834.86 in temporary total disability.

AWARD

WHEREFORE, the Appeals Board finds that the Award entered by Administrative Law Judge Bryce D. Benedict, dated April 16, 1997, and amended by an Order Nunc Pro Tunc dated May 22, 1997, should be, and is hereby, modified:

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Janet L. Harms, and against the respondent, Wal-Mart, and its insurance carrier, Insurance Company of the State of Pennsylvania, for an accidental injury which occurred January 14, 1991, and based upon an average weekly wage of \$187.54 for 59.86 weeks of temporary total disability compensation in the sum of \$8,834.86, and 355.14 weeks at the rate of \$11.25 per week or \$3,995.33, for a 9% permanent partial general disability, making a total award of \$12,830.19.

As of August 29, 1997, there is due and owing claimant 59.86 weeks of temporary total disability compensation in the sum of \$8,834.86, followed by 285.71 weeks of permanent partial compensation at the rate of \$11.25 per week in the sum of \$3,214.24 for a total of \$12,049.10, which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$781.09 is to be paid for 69.43 weeks at the rate of \$11.25 per week, until fully paid or further order of the Director.

The Appeals Board approves and adopts all other orders entered by the Administrative Law Judge not inconsistent herewith.

IT IS SO ORDERED.

Dated this ____ day of August 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John J. Bryan, Topeka, KS
H. Wayne Powers, Overland Park, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director